

DISADVANTAGED BUSINESS ENTERPRISE (DBE) SOLICITATION GUIDANCE

CLEAN WATER FUND PROGRAM and SAFE DRINKING WATER LOAN PROGRAM

All municipalities applying for funds from the Clean Water Fund Program (CWFP) or the Safe Drinking Water Loan Program (SDWLP) **must make good faith efforts** to solicit disadvantaged business enterprises (DBEs) in their construction projects. When procuring construction work, equipment, raw materials, or supplies for a project, a municipality must comply with the DBE solicitation requirements whenever the procurement must be bid under the state procurement laws. DBEs include, but are not limited to, minority business enterprises (MBEs) and women business enterprises (WBEs).

Prime contractors and subcontractors participating in a CWFP or SDWLP funded project **must also make good faith efforts** whenever they subcontract for construction work, equipment, raw materials, or supplies.

IMPORTANT: Good faith efforts **include solicitation** of DBEs **and other steps** identified in Form 8700-294, DBE Good Faith Certification Form, which the municipality must complete before receiving a loan. See the Forms section below.

When advertising bids for a CWFP or SDWLP funded project, municipalities and contractors must meet the DBE requirements, including the solicitation requirements below. Prime contractors and subcontractors must continue to use the solicitation methods described below under “Three Options to Meet Solicitation Requirements” when hiring any subcontractors for CWFP or SDWLP projects, even if utilization goals have already been met.

Three Options to Meet Solicitation Requirements

Municipalities, when hiring prime contractors; prime contractors, when hiring subcontractors; and subcontractors, when hiring other subcontractors, must do **at least one** of the following in order to comply with DBE solicitation requirements:

1. **Include language in bid advertisements** that encourages DBEs to submit bid proposals. If contracts are advertised separately, each advertisement should include the DBE language.
 - **MUNICIPALITIES:** To make a good faith effort when hiring prime contractors, the municipality can add a simple statement to its advertisements for prime contractors such as “We encourage DBEs, including MBEs and WBEs, to submit bid proposals.” The advertisements must appear at least in the official newspaper of public record for the municipality. ***The municipality must then submit a copy of the advertisement to the DNR along with other bid documents.***
 - **PRIME CONTRACTORS AND SUBCONTRACTORS:** To make a good faith effort when subcontracting, a contractor can advertise for subcontractors with an ad that includes a simple statement like “DBEs, including MBEs and WBEs, are encouraged to submit proposals.” If just one advertisement is published for all areas of work that may be subcontracted, it should indicate those types of work that could be subcontracted. The advertisement(s) must appear in an industry trade publication and/or the official newspaper of public record for the municipality. ***The prime contractor should supply a copy of the advertisement to the consulting engineer or the municipality so they can submit it to the DNR along with other bid documents.***
2. **Contact DBEs on a Unified Certification Program (UCP) List** to solicit bids from these firms (e.g., firms registered in the WisDOT UCP, <http://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>). This good faith effort option is available for municipalities, prime contractors and subcontractors to comply with the DBE requirements. The individual that makes the contacts should document all the contacts, preferably using [Form 8700-294a](#), the DBE Contacts Worksheet.

The UCP lists are the main sources of certified DBEs for the CWFP and the SDWLP, but there are other sources available. Any certification must meet the same requirements as those used for UCP-listed businesses. Any firm providing DBE certifications must be approved by the U.S. Environmental Protection Agency (USEPA).

3. **Utilize DBEs registered with the UCP** (e.g., WisDOT UCP, <http://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>). Municipalities must require prime contractors to complete and submit with bids EPA Form 6100-4, DBE Subcontractor Utilization Form, for any DBE subcontractors they intend to use on the contract. ***Municipalities must then submit those forms to DNR along with other bidding documents prior to loan closing.***



When Solicitation Requirements Are Not Met

- If none of the above options are used by the municipality and the construction contractor(s) to meet DBE solicitation requirements for a project, **8% of the construction costs in the project budget will be ineligible for SDWLP funding or eligible only for the market interest rate in the CWFP.**
- **MUNICIPALITIES:** If a contractor follows at least one of the options to meet DBE solicitation requirements for a project contract, but the municipality uses none of the options to meet DBE solicitation requirements for a project contract, **1% of the construction costs in the project budget for that contract will be ineligible for SDWLP funding or eligible only for the market interest rate in the CWFP.**
- **PRIME CONTRACTORS:** If a municipality uses at least one of the options to meet DBE solicitation requirements for a project contract, but the prime contractor uses none of the options to meet DBE solicitation requirements, **7% of the costs of that specific construction contract that would have been eligible for subsidy will instead be ineligible for SDWLP funding or eligible only for market interest rate in the CWFP.**

Forms

Use the following forms to document good faith efforts and DBE utilization. You can obtain all DBE-related forms from our website at <http://dnr.wi.gov/Aid/documents/EIF/Forms/Forms.html>, or by contacting Meja Maka at (608) 266-9193 or meja.maka@wisconsin.gov. The EPA forms are further explained in the "Contract Packet for DBE Compliance", which is also available on our website.

1. **EIF Form 8700-294 - DBE Good Faith Certification Form.** This mandatory form asks the municipality to certify that required steps were taken to utilize DBEs, including MBEs and WBEs, in its EIF project. The municipality must answer several questions and provide explanations or justification for any "no" answers as to why specific steps were not taken.
2. **EIF Form 8700-294a – DBE Contacts Worksheet (Revised April 2015).** It is not mandatory to submit this form when following Option 2 to meet good faith efforts, but we encourage municipalities and contractors to use Form 8700-294a. This form provides an easy format for documenting contacts and provides DNR with all the information needed to conduct a review of DBE good faith efforts.
3. **EPA Form 6100-2 – DBE Program Subcontractor Participation Form.** This form gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have. This form is submitted directly to EPA.
4. **EPA Form 6100-3 – DBE Program Subcontractor Performance Form.** This form captures an intended subcontractor's description of work to be performed for the prime contractor and the price of the work submitted to the prime.
5. **EPA Form 6100-4 – DBE Program Subcontractor Utilization Form.** This form captures the prime contractor's intended use of an identified DBE subcontractor, and the estimated dollar amount of the subcontract.

Contract Packet

When letting a contract for a project that may be financed with CWFP or SDWLP financial assistance, municipalities designated as "federal equivalency" must include specific language and forms in the bidding documents.

The department will select Federal Equivalency projects and notify selected municipalities in advance of bidding.

See the "Contract Packet" on our Environmental Loans News web page at <http://dnr.wi.gov/Aid/LoanNews.html> or under Forms & Publications at <http://dnr.wi.gov/Aid/documents/EIF/Forms/Forms.html> for details of what must be included in the bidding documents. If a municipality is requesting refinancing of a previously constructed project and the Contract Packet documents were not included in the bids, a municipality may complete and submit the required forms to meet this requirement.

Additional Information

For additional information regarding DBE procurement requirements, contact the DNR project manager assigned to your project or contact Meja Maka at (608) 266-9193 or meja.maka@wisconsin.gov. Information is also available on the Environmental Loans website at <http://dnr.wi.gov/Aid/documents/EIF/Guide/DBE.html>.

